



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6160

Introduced 2/11/2010, by Rep. David Reis

SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A
35 ILCS 10/5-15

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that, for taxable years beginning on or after January 1, 2011 and ending on or before December 31, 2012, any taxpayer who has been awarded a credit under this Act may elect to claim all or part of the credit against the taxpayer's obligation to pay over withholding tax under the Illinois Income Tax Act. Provides that the election shall be made in the form and manner required by the Department of Commerce and Economic Opportunity and must be made at least 60 days prior to the first day of the taxable year. Provides that each employee whose taxes are withheld by an employer who retains withheld taxes under the Act must receive credit for 100% of the taxes withheld from his or her pay. Requires the Department of Revenue to file a report with the General Assembly and the Governor on or before June 1, 2013, concerning the applicants' retention of withheld taxes and economic development in Illinois. Makes other changes. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

LRB096 16875 HLH 32187 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 704A as follows:

6 (35 ILCS 5/704A)

7 Sec. 704A. Employer's return and payment of tax withheld.

8 (a) In general, every employer who deducts and withholds or
9 is required to deduct and withhold tax under this Act on or
10 after January 1, 2008 shall make those payments and returns as
11 provided in this Section.

12 (b) Returns. Every employer shall, in the form and manner
13 required by the Department, make returns with respect to taxes
14 withheld or required to be withheld under this Article 7 for
15 each quarter beginning on or after January 1, 2008, on or
16 before the last day of the first month following the close of
17 that quarter.

18 (c) Payments. With respect to amounts withheld or required
19 to be withheld on or after January 1, 2008:

20 (1) Semi-weekly payments. For each calendar year, each
21 employer who withheld or was required to withhold more than
22 \$12,000 during the one-year period ending on June 30 of the
23 immediately preceding calendar year, payment must be made:

1 (A) on or before each Friday of the calendar year,
2 for taxes withheld or required to be withheld on the
3 immediately preceding Saturday, Sunday, Monday, or
4 Tuesday;

5 (B) on or before each Wednesday of the calendar
6 year, for taxes withheld or required to be withheld on
7 the immediately preceding Wednesday, Thursday, or
8 Friday.

9 (2) Semi-weekly payments. Any employer who withholds
10 or is required to withhold more than \$12,000 in any quarter
11 of a calendar year is required to make payments on the
12 dates set forth under item (1) of this subsection (c) for
13 each remaining quarter of that calendar year and for the
14 subsequent calendar year.

15 (3) Monthly payments. Each employer, other than an
16 employer described in items (1) or (2) of this subsection,
17 shall pay to the Department, on or before the 15th day of
18 each month the taxes withheld or required to be withheld
19 during the immediately preceding month.

20 (4) Payments with returns. Each employer shall pay to
21 the Department, on or before the due date for each return
22 required to be filed under this Section, any tax withheld
23 or required to be withheld during the period for which the
24 return is due and not previously paid to the Department.

25 (d) Regulatory authority. The Department may, by rule:

26 (1) If the aggregate amounts required to be withheld

1 under this Article 7 do not exceed \$1,000 for the calendar
2 year, permit employers, in lieu of the requirements of
3 subsections (b) and (c), to file annual returns due on or
4 before January 31 of the following year for taxes withheld
5 or required to be withheld during that calendar year and to
6 pay the taxes required to be shown on each such return no
7 later than the due date for such return.

8 (2) Provide that any payment required to be made under
9 subsection (c)(1) or (c)(2) is deemed to be timely to the
10 extent paid by electronic funds transfer on or before the
11 due date for deposit of federal income taxes withheld from,
12 or federal employment taxes due with respect to, the wages
13 from which the Illinois taxes were withheld.

14 (3) Designate one or more depositories to which payment
15 of taxes required to be withheld under this Article 7 must
16 be paid by some or all employers.

17 (4) Increase the threshold dollar amounts at which
18 employers are required to make semi-weekly payments under
19 subsection (c)(1) or (c)(2).

20 (e) Annual return and payment. Every employer who deducts
21 and withholds or is required to deduct and withhold tax from a
22 person engaged in domestic service employment, as that term is
23 defined in Section 3510 of the Internal Revenue Code, may
24 comply with the requirements of this Section with respect to
25 such employees by filing an annual return and paying the taxes
26 required to be deducted and withheld on or before the 15th day

1 of the fourth month following the close of the employer's
2 taxable year. The Department may allow the employer's return to
3 be submitted with the employer's individual income tax return
4 or to be submitted with a return due from the employer under
5 Section 1400.2 of the Unemployment Insurance Act.

6 (f) Magnetic media and electronic filing. Any W-2 Form
7 that, under the Internal Revenue Code and regulations
8 promulgated thereunder, is required to be submitted to the
9 Internal Revenue Service on magnetic media or electronically
10 must also be submitted to the Department on magnetic media or
11 electronically for Illinois purposes, if required by the
12 Department.

13 (g) For amounts deducted or withheld after December 31,
14 2009, a taxpayer who makes an election under subsection (f) or
15 (f-5) of Section 5-15 ~~Section 5-15(f)~~ of the Economic
16 Development for a Growing Economy Tax Credit Act for a taxable
17 year shall be allowed a credit against payments due under this
18 Section for amounts withheld during the first calendar year
19 beginning after the end of that taxable year equal to the
20 amount of the credit awarded to the taxpayer by the Department
21 of Commerce and Economic Opportunity under the Economic
22 Development for a Growing Economy Tax Credit Act for the
23 taxable year. The credit may not reduce the taxpayer's
24 obligation for any payment due under this Section to less than
25 zero. For taxpayers who make an election under subsection (f)
26 of Section 5-15 of the Economic Development for a Growing

1 Economy Tax Credit Act, if ~~If~~ the amount of the credit exceeds
2 the total payments due under this Section with respect to
3 amounts withheld during the calendar year, the excess may be
4 carried forward and applied against the taxpayer's liability
5 under this Section in the 5 succeeding calendar years. The
6 credit shall be applied to the earliest year for which there is
7 a tax liability. If there are credits from more than one
8 taxable year that are available to offset a liability, the
9 earlier credit shall be applied first. Each employer who
10 deducts and withholds or is required to deduct and withhold tax
11 under this Act and who retains income tax withholdings under
12 Section 5-15 of the Economic Development for a Growing Economy
13 Tax Credit Act must make a return with respect to such taxes
14 and retained amounts in the form and manner that the
15 Department, by rule, requires and pay to the Department or to a
16 depository designated by the Department those withheld taxes
17 not retained by the taxpayer. This Section is exempt from the
18 provisions of Section 250 of this Act.

19 (Source: P.A. 95-8, eff. 6-29-07; 95-707, eff. 1-11-08; 96-834,
20 eff. 12-14-09.)

21 Section 10. The Economic Development for a Growing Economy
22 Tax Credit Act is amended by changing Section 5-15 as follows:

23 (35 ILCS 10/5-15)

24 Sec. 5-15. Tax Credit Awards. Subject to the conditions set

1 forth in this Act, a Taxpayer is entitled to a Credit against
2 or, as described in subsection (g) ~~(f)~~ of this Section, a
3 payment towards taxes imposed pursuant to subsections (a) and
4 (b) of Section 201 of the Illinois Income Tax Act that may be
5 imposed on the Taxpayer for a taxable year beginning on or
6 after January 1, 1999, if the Taxpayer is awarded a Credit by
7 the Department under this Act for that taxable year.

8 (a) The Department shall make Credit awards under this Act
9 to foster job creation and retention in Illinois.

10 (b) A person that proposes a project to create new jobs in
11 Illinois must enter into an Agreement with the Department for
12 the Credit under this Act.

13 (c) The Credit shall be claimed for the taxable years
14 specified in the Agreement.

15 (d) The Credit shall not exceed the Incremental Income Tax
16 attributable to the project that is the subject of the
17 Agreement.

18 (e) Nothing herein shall prohibit a Tax Credit Award to an
19 Applicant that uses a PEO if all other award criteria are
20 satisfied.

21 (f) In lieu of the Credit allowed under this Act against
22 the taxes imposed pursuant to subsections (a) and (b) of
23 Section 201 of the Illinois Income Tax Act for any taxable year
24 ending on or after December 31, 2009, the Taxpayer may elect to
25 claim the Credit against its obligation to pay over withholding
26 tax under Section 704A of the Illinois Income Tax Act.

1 (1) The election under this subsection (f) may be made
2 only by a Taxpayer that (i) is primarily engaged in one of
3 the following business activities: motor vehicle metal
4 stamping, automobile manufacturing, automobile and light
5 duty motor vehicle manufacturing, motor vehicle
6 manufacturing, light truck and utility vehicle
7 manufacturing, or motor vehicle body manufacturing and
8 (ii) meets the following criteria:

9 (A) the Taxpayer (i) had an Illinois net loss or an
10 Illinois net loss deduction under Section 207 of the
11 Illinois Income Tax Act for the taxable year in which
12 the Credit is awarded, (ii) employed a minimum of 1,000
13 full-time employees in this State during the taxable
14 year in which the Credit is awarded, (iii) has an
15 Agreement under this Act on December 14, 2009 (the
16 effective date of Public Act 96-834) ~~this amendatory~~
17 ~~Act of the 96th General Assembly~~, and (iv) is in
18 compliance with all provisions of that Agreement; or

19 (B) the Taxpayer (i) had an Illinois net loss or an
20 Illinois net loss deduction under Section 207 of the
21 Illinois Income Tax Act for the taxable year in which
22 the Credit is awarded, (ii) employed a minimum of 1,000
23 full-time employees in this State during the taxable
24 year in which the Credit is awarded, and (iii) has
25 applied for an Agreement within 180 days after December
26 14, 2009 (the effective date of Public Act 96-834) ~~this~~

1 ~~amendatory Act of the 96th General Assembly.~~

2 (2) An election under this subsection shall allow the
3 credit to be taken against payments otherwise due under
4 Section 704A of the Illinois Income Tax Act during the
5 first calendar year beginning after the end of the taxable
6 year in which the credit is awarded under this Act.

7 (3) The election shall be made in the form and manner
8 required by the Illinois Department of Revenue and, once
9 made, shall be irrevocable.

10 (4) If a Taxpayer who meets the requirements of
11 subparagraph (A) of paragraph (1) of this subsection (f)
12 elects to claim the Credit against its withholdings as
13 provided in this subsection (f), then, on and after the
14 date of the election, the terms of the Agreement between
15 the Taxpayer and the Department may not be further amended
16 during the term of the Agreement.

17 Each employee whose taxes are withheld by an employer who
18 retains amounts under this subsection (f) must receive credit
19 for 100% of the taxes withheld from his or her pay.

20 (f-5) For taxable years beginning on or after January 1,
21 2011 and ending on or before December 31, 2012, any taxpayer
22 who has been awarded a credit under this Act may elect to claim
23 all or part of the credit against the taxpayer's obligation to
24 pay over withholding tax under Section 704A of the Illinois
25 Income Tax Act. The election shall be made in the form and
26 manner required by the Department and must be made at least 60

1 days prior to the first day of the taxable year. A taxpayer may
2 make an election under this subsection for only one taxable
3 year. A taxpayer who qualifies for an election under subsection
4 (f) of this Section is not eligible to make an election under
5 this subsection (f-5). Each employee whose taxes are withheld
6 by an employer who retains amounts under this subsection (f-5)
7 must receive credit for 100% of the taxes withheld from his or
8 her pay.

9 (f-10) The Department shall file a report with the General
10 Assembly and the Governor on or before June 1, 2013, concerning
11 the applicants' retention of withheld taxes as permitted under
12 subsections (f) and (f-5) and regarding the progress the
13 assistance provided in subsections (f) and (f-5) has made in
14 advancing economic development in Illinois and its various
15 regions.

16 (g) ~~(f)~~ A pass-through entity that has been awarded a
17 credit under this Act, its shareholders, or its partners may
18 treat some or all of the credit awarded pursuant to this Act as
19 a tax payment for purposes of the Illinois Income Tax Act. The
20 term "tax payment" means a payment as described in Article 6 or
21 Article 8 of the Illinois Income Tax Act or a composite payment
22 made by a pass-through entity on behalf of any of its
23 shareholders or partners to satisfy such shareholders' or
24 partners' taxes imposed pursuant to subsections (a) and (b) of
25 Section 201 of the Illinois Income Tax Act. In no event shall
26 the amount of the award credited pursuant to this Act exceed

1 the Illinois income tax liability of the pass-through entity or
2 its shareholders or partners for the taxable year.

3 (Source: P.A. 95-375, eff. 8-23-07; 96-834, eff. 12-14-09;
4 96-836, eff. 12-16-09; revised 12-21-09.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.